IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.29270 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**NO**
2	To be referred to the Reporter or not ?	**NO**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**NO**
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	**NO**
5	Whether it is to be circulated to the civil judge ?	**NO**

PRABHABEN VADILAL MEHTA & 1 - Petitioner(s)
Versus
KUTCH KHADI GRAMODHYOG SANGH & 2 - Respondent(s)

Appearance :
MR NV ANJARIA for Petitioner(s) : 1 - 2.
MR RA SEJPAL for Respondent(s) : 1,
MR BP MUNSHI for Respondent(s) : 2,
MS PJ DAVAWALA for Respondent(s) : 3,

CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 17/12/2007
ORAL JUDGMENT

(1) This petition challenges order dated 16/17.10.2007 made by Gujarat Revenue Tribunal in Revision Application No.12 of 2007. In

light of the view that the Court is inclined to adopt, the petition is taken up for final hearing and disposal today. **RULE**. The learned advocates appearing for the respective respondents are directed to waive service.

(2) Respondent No.1 is a registered Public Trust, who intended to dispose of certain properties belonging to the Trust. For this purpose an advertisement dated 07.01.2004 was got published in local daily 'Kachchh Mitra'. Pursuant thereto the petitioners were one of the offerers along with one another person. At that point of time the petitioners had quoted a sum of Rs.23,00,000/- and the offer made by the petitioners was the highest. On 27.08.2004 respondent No.1-Trust passed a resolution accepting the offer of the petitioners. The petitioners, therefore, deposited 10% of the offered amount. The Trust thereupon approached respondent No.3 authority for sanction under Section 36 of the Bombay Public Trusts Act, 1950 (the Act). The application was moved on

16.10.2004.Admittedly, the respondent authority did not take any decision until 14.05.2006 when an advertisement came to be published inviting fresh bids.

(3) The petitioners raised objections vide communication dated 27.05.2006. The objections were rejected by respondent No.3 vide order dated 27.04.2007 while accepting the offer of respondent No.2 at a sum of Rs.35,01,000/-. The petitioners carried the matter before the Tribunal by filing revision application. After hearing the parties, the order made by the Joint Charity Commissioner was upheld by the Tribunal.

(4) During course of hearing before the Tribunal the petitioners tendered a written pursis whereunder, without prejudice to the rights of the petitioners, the petitioners offered a sum of Rs.35,01,000/- if in a fresh offer inviting bids the Trust / authority receives any final offer which is below Rs.35,01,000/-. The

Tribunal rejected the said suggestion / offer made by the petitioners by observing that the said offer was not reliable.

(5) On 28.11.2007, after hearing the learned advocate for the petitioners, the following order came to be made:

> "(1) Heard the learned advocate for the petitioners as well as the learned advocate for respondent No.1-Trust appearing on caveat.
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> (2) In light of the requirements of provisions of Section 36 of the Bombay Public Trusts Act, 1950 the approach of the Tribunal in denying an opportunity to the petitioners to participate in the bidding process is not warranted, as contended by the learned advocate for the petitioners. Learned advocate has also made various other submissions on the validity of the action of the Charity Commissioner in calling for fresh bids.
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> (3) However, without entering into the said aspect of the matter, notice is required to be issued on the limited ground of permitting the petitioners to participate in the bid. To test the *bona*

fides of the petitioners, the petitioners are directed to deposit 15% of Rs.35,01,000/- within a period of 01 (one) week from today. The petitioners shall file an undertaking to the aforesaid effect. Upon the undertaking being filed on or before 03.12.2007, **NOTICE** returnable on 10.12.2007. Mr.R.A.Sejpal, learned advocate for respondent No.1-Trust appearing on caveat, waives service of notice. Direct service qua rest of the respondents is permitted. Upon the deposit being made as directed hereinbefore, no further process to be undertaken by the Charity Commissioner."

(6) Having heard the learned advocates appearing for the petitioners, for respondent No.1-Trust, for respondent No.2-the successful bidder, and respondent No.3 authority it is apparent that without entering into the respective submissions as to validity or otherwise of the action of the Charity Commissioner in calling for fresh bids, bearing in mind the requirements of provisions of Section 36 of the Act, the petitioners must be provided an opportunity to participate in

the bidding process. In compliance with the order dated 28.11.2007 the petitioners have filed undertaking on 01.12.2007 as well as placed on record receipts of deposit @ 15% of Rs.35,01,000/- issued by respondent No.1-Trust on 13.11.2007.

(7) In the circumstances, both the orders made by the Tribunal and the Joint Charity Commissioner are quashed and set aside without recording any opinion on merits of the matter with a direction to the Joint Charity Commissioner to conduct a fresh bidding process between the petitioners on one hand and respondent No.2 on the other hand. The Joint Charity Commissioner shall complete such an exercise on or before 28.02.2008. To facilitate such process of bidding the upset price will be fixed at a sum of Rs.36,01,000/- as quoted by the learned advocate for the petitioners and the Joint Charity Commissioner shall ensure that the parties make their bid beyond the said figure of Rs.36,01,000/-.

(8) Respondent No.2, who was declared to be a successful bidder by the Joint Charity Commissioner, has deposited 15% of the offered amount with the respondent-Trust on 25.05.2006 and such amount is lying with respondent No.1-Trust. The petitioners have also deposited 10% of Rs.23,00,000/- on 26.07.2004 with respondent No.1-Trust and the said amount is lying with respondent No.1-Trust. (Though, at this stage, learned advocate for the petitioners states that the said amount was subsequently raised to 15%, at this juncture there is no evidence on record as regards such a statement and hence, this will be subject to verification).

(9) In the aforesaid circumstances, in the event, ultimately, the petitioners succeed in the *inter se* bidding between the petitioners and respondent No.2, to ensure that respondent No.2 is not put to loss and simultaneously

respondent No.1-Trust also is not put to loss, interest @ 6% shall be calculated by respondent No.1-Trust on the amount of deposit of respondent No.2 and paid to respondent No.2 in the event respondent No.2 ultimately does not succeed in the bidding between to parties. Respondent No.1-Trust shall make payment of such amount from the amount of deposit made by the petitioners viz. 10% (or 15% subject to verification) of Rs.23,00,000/- lying with respondent No.1-Trust since 26.07.2004.

(10) The petition is allowed accordingly in the aforesaid terms. Rule made absolute to the aforesaid extent. There shall be no order as to costs. Needless to state that this order shall not operate as a precedent for the simple reason that the genesis of the entire litigation is the procrastination of the office of respondent No.3 authority from October 2004 up to May 2006. Direct service permitted.

Sd/-
[D.A. MEHTA, J]

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Bhavesh*